PUBLIC SERVICE COMMISSIONS—DISCUSSION.

GEORGE B. HUDNALL: I am happy to say that we did not need the stimulus of a Jay Gould, a Vanderbilt or a Whitney to enact a public utility law in Wisconsin. There were, however, conditions existing in Wisconsin which justified the enactment of that law, and it may be interesting to notice briefly what those conditions were.

Prior to 1903, the railroads had been paying, in lieu of taxes, a percentage on their gross earnings. Through various political campaigns and before the legislature, there had been agitation for the taxation of railroads on an *ad valorem basis*. In 1903 such an act was passed. It was claimed at the time that the railroads intended shifting the added tax to the shipper, by increasing the freight rates. Governor LaFollette sent a special message to the Legislature of 1903, in addition to his general message, strongly advocating the creation of a railroad commission for the purpose, among others, of preventing the shifting of this added burden of taxation from the railroads to the public. Such a bill was then pending in the Assembly, but was defeated.

In 1904 the Republican party adopted a platform favoring a railroad commission with power to regulate freight and passenger rates. A campaign was made throughout the state,—in every assembly and senatorial district,—favoring the enactment of such a law, and every member of the legislature was elected upon the direct issue of whether we were or were not to have a railroad commission.

When the legislature met in 1905, a bill was drafted

by the Senate Committee on Railroads which was finally enacted into law, creating a railroad commission consisting of three members, to be appointed by the Governor, by and with the advice and consent of the Senate, and subject to removal by the Governor for cause. When one reads the Wisconsin act and the law subsequently passed in New York, he cannot fail to recognize the relation of parent and child between the two.

Our commissioners receive a less salary than those in New York, ours receiving an annual salary of $5,000 each, while the salary in New York is $15,000 per annum for each commissioner. We have succeeded in getting a first-class commission, as good, I believe, as any in the world. It is my opinion that our salaries are ample. In the East, living conditions are different, salaries are higher, which, with other conditions, probably justifies the difference in salaries in the two states.

The Wisconsin Act of 1905 gave the commission jurisdiction over railroad corporations, express companies, car companies, sleeping car companies, freight and freight line companies, and interurban street railroad companies. In 1907, under the administration of Governor Davidson, there were added to the jurisdiction of the commission, telephone, telegraph, gas, electric light, water and power companies, and also urban street car companies.

The Wisconsin commission, therefore, has jurisdiction over more utilities than has the New York commission. As the New York commissioner, Mr. Osborne, has said, their commission has no control at this time over telephone and telegraph companies; neither has it control over water companies.

The control over railroads by the New York commission is similar to ours in many respects. We have, however, several features which they have not, some funda-

mental, others possibly not. Our control over gas and electric companies is much stronger than in New York. I will endeavor, briefly, to indicate the differences in the two laws.

The Wisconsin Act provides for a valuation by the commission of *all* utilities; the New York law does not provide for any valuation. To my mind, it is highly essential in determining a rate, to ascertain first the value of the utility. The commission cannot make a rate so low that the utility cannot receive a return of at least legal interest (6 per cent.) upon the value of the utility. It is necessary, therefore, in order intelligently to determine what rate should be made, to determine first the value of the utility. Under the Act of 1907, the commission is to value only such property of the utility as is "actually used and useful for the convenience of the public". If a utility has some property which is not actually used and useful for the convenience of the public, it should not receive a return upon its value, and under the Act of 1907 the commission, in making a valuation, would not value that piece of property.

In Wisconsin a uniform system of accounting is mandatory; in New York it is permissive. In Wisconsin it is "shall"; in New York it is "may".

In addition to a mandatory uniform system of accounting, the Wisconsin Act of 1907 provides that the utility shall keep no other books of account that those prescribed or provided by the commission. There was very strenuous opposition to this feature of the law before the Legislature. That Act also provides that the commission shall audit the books of all utilities; that the utility shall render an annual balance sheet to the commission, and, when the commission so requires, the utility shall keep an adequate depreciation account. The commission shall also keep

itself informed of all new construction, extensions, and additions to the property of the public utility. The reports the utilities must furnish to the commission must show in itemized detail "the depreciation per unit, the salaries and wages separately per unit, legal expenses per unit, taxes and rentals separately per unit, the receipt from residuals, by-products, services or other sales separately per unit, the total and net cost per unit, the gross and net profit per unit, the dividends and interest per unit, surplus or reserve per unit, the prices per unit paid by consumers, and, in addition, such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing the unit of its product or service to the public."

These accounts and reports are, of course, open to the public and are published by the commission in their annual reports. In the published report of the commission there is to be also shown not only the *physical* value of the property, but also the value of *all* the property of the utility.

It seems to me that when you have adequately and definitely provided for a valuation of both the *physical* property and *all* the property of the utility; for a uniform system of accounting and auditing; for a depreciation, new construction, and addition account; for a complete report showing the cost, the gross and net profit, etc., per unit, and the price paid by the consumer, that you have the factors from which, by mathematical calculation, you can ascertain what is a reasonable rate; at least, that is what we tried to accomplish by the Act of 1907. This is wholly lacking in the New York law.

In Wisconsin it is provided that *all* public utilities shall

file with the commission schedules showing all their rates, while in New York it is provided that only railroads and street railroads shall file such schedules. I find no provision in the New York Act for gas and electric companies to file any schedules of rates.

In Wisconsin the rendering of any service free, or at a greater or less rate than that named in the published schedule, is punishable by a heavy fine. In New York, departures from schedules, discriminations, rebates, etc., are limited to railways and street railways. There is no such provision covering gas and electric companies; neither is it provided that discrimination shall be ground for complaint against railroads or street railroads.

In Wisconsin it is provided that *all* utilities shall furnish adequate service at reasonable rates. I find no mandatory injunction in the New York law in this regard as to gas and electric companies.

In Wisconsin any mercantile, agricultural, or manufacturing society or any body politic or municipal organization, and as to railroads, street railroads, express and telegraph companies, any person, and as to other utilities, any twenty-five persons, may make complaint that any rate is unreasonable or unjustly discriminatory, or that any service is inadequate or cannot be obtained. In New York, as to railways and street railways, only persons *aggrieved* may make complaint, and as to gas and electric companies, a municipality or certain number of *customers* may make complaint. In Wisconsin we do not limit complaint to customers or those who are aggrieved, but, on the contrary, provide that the absence of direct damage to the complainant shall not be sufficient cause to warrant the commission in dismissing the complaint.

The Wisconsin Act, unlike New York, provides that the utilities may make complaint to the commission as to

any matter affecting them, with like effect as though made by any other person against them.

If the utility does not remedy the thing complained of, here, as well as in New York, the matter is investigated by the commission. Oftentimes an investigation will develop sufficient facts to warrant the commission in believing that no hearing ought to be ordered, or it will convince the utility and the matter will be remedied without the necessity of a formal hearing.

If, however, after investigation, the commission is satisfied that a hearing should be had, they may order a hearing upon ten days' notice, and if, upon such hearing, any rate is found to be unjust, unreasonable, or discriminatory or preferential, the commission determines and declares, and by order fixes, a reasonable rate to be observed and followed in the future in lieu of that found to be unjust, unreasonable, discriminatory or preferential. In Wisconsin the commission make the *exact* rate, while in New York the commission make a *maximum* rate.

The thing that impresses me regarding the maximum rate provided by the New York law, especially as to gas and electricity, is this. The New York law not providing for any schedule of rates for gas and electricity, and not being mandatory that gas and electric companies shall furnish an adequate service at reasonable rates, and there being no penalty provided for a discrimination in such rates, I should judge a maximum rate in practice would be found to be rather inefficacious, for the reason that, after the commission has fixed a maximum rate, one customer may be charged the maximum rate, another may be charged any rate not exceeding the maximum rate, and the third may be given free service, and yet there be no violation of the law. Such a thing is impossible under the Wisconsin Act. I

notice the commissioner from New York said that they expect, in the future, to strengthen their gas and electric law in that state.

Under the Act of 1907, if the commission, after investigation, find that any rate or service is unjust, unreasonable, insufficient, discriminatory or preferential, or otherwise in violation of any of the provisions of the Act, the commission shall order the utility to pay into the State Treasury, within twenty days, the expense incurred by the commission upon such investigation.

In Wisconsin all orders of the commission go into force and become effective twenty days after they are promulgated, unless the commission shall otherwise order, and all orders of the commission are made *prima facie* lawful and reasonable.

If any utility or any person in interest is dissatisfied with any order of the commission, they may, within ninety days, begin an action in the circuit court for Dane County (the county in which the Capitol and the commission are located) against the commission as defendant, to vacate and set aside such order. There has been but one action begun to set aside an order of the commission in the two and one-half years of its existence, and the order of the commission was upheld by the courts.

No injunction shall issue suspending or staying any order of the commission except upon application to the court, notice to the commission, and hearing.

The court review, from this point on, is unique in some particulars. The Interstate Commerce commission found that railroads will not present all their evidence to the commission, but will reserve the presentation thereof in the first instance to the court. The result is that the commission have no chance of passing on all the facts, and the court oftentimes reverses the commission on

evidence which was never presented to the commission. We have, I think, effectually guarded against this practice in Wisconsin by providing that if, upon the trial of any action, "evidence shall be introduced by the plaintiff which is found by the courts to be different from that offered upon the hearing before the commission or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon the receipt of such evidence, the commission shall consider the same and may alter, modify, amend or rescind its order . . . . . and shall report its action thereon to said court within ten days from the receipt of such evidence. If the commission shall rescind its order complained of, the action shall be dismissed; it if shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order."

The commission is thus placed in a position where it passes on all the testimony offered before the matter comes finally before the court for decision. This will have the effect of making every utility present to the commission, in the first instance, all the testimony it has on the subject.

It is impossible for the state to deal with franchises, stocks, bonds or other similar matters of a corporation that is not a creature of that state. To obviate this difficulty, it is provided by the Wisconsin Act of 1907 that

"no license, permit or franchise to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power, shall be hereafter granted or transferred except to a corporation duly organized under the laws of the State of Wisconsin."

It is further provided that every license, permit or franchise hereafter granted to any such public utility shall have the effect of an indeterminate permit. The term "indeterminate permit" is defined "as meaning and embracing every grant, directly or indirectly, from the state to any corporation, company, individual, association, or their lessees, trustees or receivers, of the power, right or privilege to own, operate, manage or control any plant of equipment within the state for the production, transmission, delivery or furnishing of heat, light, water or power, either directly or indirectly to or for the public, which shall continue in force until such time as the municipality shall exercise its option to purchase, as provided by the Act, or until it shall otherwise terminate according to law."

Every indeterminate permit shall be "subject to the provision that the municipality in which the major part of its property is situated, may purchase the property of such public utility actually used and useful for the convenience of the public at any time, paying therefor just compensation, to be determined by the commission, and according to the terms and conditions fixed by the commission".

Any public utility, being at the time a corporation under the laws of the state of Wisconsin, and operating under an existing license, permit or franchise, upon the filing at any time prior to the expiration of such license, permit or franchise, a written declaration that it surren-

ders such license, permit or franchise, shall, by operation of law, receive in lieu thereof, an indeterminate permit, as provided by the Act.

So long as a utility furnishes adequate service at reasonable rates, it should have not only the privilege of *continuing in business indeterminately, but should also* continue in business without competition, and the Act provides not only that these permits should be indeterminate, but that no other license, permit or franchise shall be granted in any municipality where there is in operation, under an indeterminate permit, a public utility engaged in a similar service, before first securing from the commission a declaration, after public hearing, that public convenience and necessity require such second public utility.

It is also provided by the Act of 1907 that every public utility having conduits, subways, poles, or other equipment on or over any street or highway, shall, for reasonable compensation, to be determined by the commission, permit the use of the same by any public utility, whenever public convenience and necessity require such use, and the same will not result in irreparable injury to the owner or other users of said equipment, nor in any substantial detriment to the service to be rendered by such owners and other users.

The Act also provides that any public utility may enter into any reasonable arrangement with its customers or consumers or employees for the division or distribution of its surplus profits, or for a sliding scale of charges, or any other financial device that may be practicable and advantageous to the parties interested. But no such arrangement or device shall be lawful until it shall be found by the commission to be reasonable and just and not inconsistent with the provisions of the Act, and shall

always be under the supervision and regulation of the commission.

Believing that as much power should be left with the municipal councils as possible, it is provided that every municipal council shall have power: (1) To determine the quality and character of each kind of product or service to be furnished or rendered by any public utility within said municipality, and all other terms and conditions not inconsistent with the Act upon which such public utility may be permitted to occupy the streets, highways or other public property within such municipality; (2) to require of any public utility such additions or extensions to its physical plant within said municipality as shall be reasonable, or necessary, and to designate the location and nature thereof and the time within which they must be completed; (3) to provide for a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the foregoing provision. If, however, the commission, after complaint and hearing, shall find any such contract, ordinance, or other determination made in pursuance thereof to be unreasonable, such contract, ordinance, or other determination shall be void.

These are some of the principal differences between the Wisconsin and New York acts.

JOHN H. GRAY: It is significant that one of the industries now under discussion was the subject of the first monograph published by the American Economic Association, and that the relation of the state to such industries was the topic that received most emphasis at the meeting called to effect the organization of that Association.

Less than a decade before the organization of the Association, the highest judicial tribunal of the land had

recognized the public character of the industries in question, and the consequent right to regulate prices in the public interest. The idea that they are affected with a public interest has been slow to permeate the minds of the promoters and managers of the industries. As a means of enforcing this idea on the monopolists, the public, in violation of all sound theories, has often used so-called competition as a club to bring the companies to time. Long after the courts had declared these monopolies of a public character, and as such subject to public regulation, the public, ignorantly, but honestly, attempted to maintain the public rights by limiting the length of franchises. This mistake has, so far, been a great impediment in the way of a satisfactory solution of our problem. The history of the undertakings under the limited franchise theory has been a close parallel to that in the previous period during the attempts at competing companies. All the world to-day recognizes the futility of competing companies. Advanced thinkers are not unanimous, but I will venture to predict are moving rapidly toward a unanimity of opinion that limited franchises, like competing companies, are to be justified, if at all, not as a means of regulation or as a method of obtaining, directly, adequate service on equitable terms, but as a mere club or weapon with which to force some sense of restraint, justice, and fear into the minds of those recalcitrant managers of public service corporations, upon whose beclouded intellect it has not yet dawned that they are dealing with companies in which the public has very much more at stake than the legal owners have. What we want is not a franchise limited in time, but one so handled and controlled that the *future* unearned increment goes to the public, and so drawn that the public can resume it at any time without formal forfeiting of it the moment the

company refuses to use it in a manner advantageous to the public. Such franchises are granted in the public, not the private, interest; the owners tacitly, if not formally, agree to give service on terms advantageous to the public. So soon as a company ceases to be able or willing to render the public service on these terms, the most that it can properly ask is that it receive compensation or repayment for the money actually contributed by the shareholders and then get out. In order that the companies may receive the benefit of all doubts arising from the ambiguity of their legal rights, we are willing to give them, in addition to what they have put in, the present value of their franchises, if on this basis they will fulfil their public duties. But to imply that a company should be given a *future* increment of value on a franchise, is to destroy at one blow the whole theory that the companies are public service companies, and thereby to wipe out all basis of controlling charges. For instance, to allow a street car company to charge a five-cent fare to-day to pay a fair rate of interest on its investment and also on the value of its franchise, and to let it continue to charge five cents when the city and the traffic have increased ten fold, on the ground that the franchise at the later date has increased in value till the earnings now are required to pay a fair rate of income on the value of the property and the franchise, is to reason in a circle. For the franchise is at present already capitalized to the full limit that the market recognizes any value in it. The practical question is of further increase in the value of the franchise. The value of the franchise, of course, depends on the rates permitted and actually collected. Social welfare demands, in the future, rates in all these services which will prevent any increase in the value of the franchise. The method of doing this is to put a value on the tangible property and also on the franchise,

worked out on some agreed scheme such as that of Dr. H. C. Adams. Then see that rates in the future are kept down to a point that will give no surplus above a fair rate on this fixed franchise value plus a fair rate on the investment in tangible property.

All in excess of this belongs, under the theory of regulation, to the users, and should remain in their hand at all times through compulsory reduction of rates.

It is just ten years since I had the honor of reading a paper before one of these associations on the subject of the Control of Gas Companies. In that paper I maintained that the attempts at regulation before the year 1897 had reduced the possible profits of the companies, but had not given adequate service at proper prices, while keeping the economic cost of rendering the service abnormally high: I further predicted, that "no regulating act beneficial to the public can be passed without the consent of the gas companies, nor can it be enforced without their coöperation". This was meant as a gentle hint to the public to use various kinds of clubs to drive respect for human rights, and some recognition of their own social obligations, into the minds of the promoters and managers of public service corporations. The world has moved at a swift pace, and over vast stretches of the then unexplored universe, within the intervening ten years. The more intelligent and notably the younger owners and managers have seen a great light. Such managers really want and are willing now to consent to many things to which they were violently opposed even ten years ago. They have recognized once for all that it is expedient to make formal acknowledgment at least of the public character of the industries. But while making such public profession, they have been fertile in inventing and causing to pass into law, in many instances, schemes of so-called

regulation whose chief object was to prevent actual regulation, and to permit the companies to be run exactly as if the public had no interest in them.

The most powerful single influence tending to make the companies willing to submit to real regulation has been the agitation for public ownership. The necessary and logical inference from the recognition of the monopolistic character and the public interest of the service has been the alternative of regulating more effectively private ownership, or of passing to public ownership and management. It is not too much to say that, among all the influences exerted against the companies, the agitation for public ownership has been far and away the most powerful. During all this beneficient agitation, the municipalizers have been blissfully ignorant of the fact that, in the existing circumstances, the evils against which they are striving are quite as sure to crop out in public as in private ownership, unless the public ownership is subject to some administrative control by a force apart from the city government. The world has, indeed, moved since a distinguished president of the American Economic Association wrote (Hadley, *Railroad Transportation,* page 54): "A great many favor limitation of railroad construction. Whether this can ever be effectively carried out is more than questionable. . . . It is not easy to introduce a principle so foreign to the general tendency of our laws; and it may be questioned whether any advantages gained at one point would not be dearly purchased at another."

Let us hope that this will prove the last utterance by a man of scientific standing supporting the view that our public service industries are private affairs, from which the state should withhold its hand. Surely, all agree to-day that there can be no control of public services,

until the public has the right to prevent unnecessary investment. Certainly, the scientific world in the intervening twenty years has decided that these industries should be monopolies. Upon this decision alone rests the right to regulate. There can be no such a thing as a fair return upon investments in this field if the capital honestly invested may be raided by so-called competing companies at will, thus duplicating the capital by unnecessary investment on which a fair return is then claimed in rate controversies.

It marked an epoch in dealing with public service companies, when the commission on public ownership of the National Civic Federation—a commission representing every phase of belief, affiliation and interest—declared in its final report, with but one dissenting voice, that the solution of the problem required that each community should have full right and power to take these industries into public ownership and management, at any time when the public interest could not be otherwise maintained. When the constitutional, statutory, and financial authorities for such action are fully established throughout the land, the opposition to effective control has no leg left on which to stand. The right to purchase by voluntary agreement and to operate, and the right to expropriate on the part of the public, is the greatest power of control to hold the companies to their duties. It is the right to compel and to control without limit. The power to take the life of a company, and also its property at a fair price, is the power to make the company the servant, not the master, of the public. Anything short of this, under present American conditions, falls short of effectiveness. The new Wisconsin law rests on this principle, while the New York law is defective at this point.

May we not justly hope that, after a generation of

warfare in this matter, the year 1907 has ushered us into a new era of peace in these industries, in the sense that perpetual use of clubs, hammering and warfare—conditions the burdens of which always fall upon the public, and which always raise the economic cost of service—may give way to an open, frank, and sincere acknowledgment on the part of the owners and promoters of these services that the services are public in their nature, and that, therefore, they must be adequately controlled by the public. If such prove not to be the case, and that right speedily, the undertakings not only will pass over into public ownership and management, but human progress requires that they should so pass. Let us hope that this changed attitude on the part of the companies may come and may so pacify the people that the public, whether represented at the polls, in the legislature and city council, the executive mansion, or embodied in controlling commissions, may lose some of its instinct for warfare, blood and destruction, and may be willing to coöperate with the private interests involved to give the owner of the private industry a guarantee of an opportunity to earn a fair return, in view of the risk, upon the money actually and necessarily invested in these enterprises.

The most significant attempts at regulation in the last generation have been embodied in the interstate commerce acts (acts which have not yet reached the legal age of twenty-one years), the railroad commission acts of Massachusetts dating from 1869, the Massachusetts Gas and Electric Light Commission acts dating from 1885, and the more recent commission acts relating to gas in New York and the amended railroad commission act of Wisconsin. To these ought to be added the National Banking act (older than any of those previously named). Although this act does not relate to what under our law

is a public service, the principle involved is so closely assimilated with the principle of the regulation of public utilities as to justify the mention of it in this connection. No one of these attempts at regulation, varied as they have been, has been without great value. Each of them, in its own way, has been of vital importance in educating, not only the consumer and the investor, but also the legislators and the managers of the private companies as well. If these various efforts be viewed, by and large, they will all be recognized as beneficial, and yet they have all fallen far short of the results which must be attained before regulation can be said to have accomplished its object in giving adequate and efficient service at proper rates. This is not to say that the legislation in regard to these commissions, and the acts of the commissions themselves, were not on the whole wise and pointed in the right direction. It is simply a recognition of the fact that human progress is slow, and that a step of one kind may be absolutely necessary as a preliminary before a much wider step in the right direction becomes possible. As well criticize the steps of a two-year-old child, because they are not equal in length and steadiness to the steps of a vigorous adult man, as to condemn these commissions because they have not accomplished what it was impossible for them to accomplish under the then existing circumstances, although many of those things may prove to be possible of accomplishment under the legislation in regard to public utilities, enacted by the legislatures in Wisconsin and New York in 1907.

Let us summarize very briefly some of the essentials of regulation and then turn our attention to a summary comparison of the public utilities act of 1907 for Wisconsin and New York, to see their relative significance when measured alongside of these fundamentals. Before mak-

ing the comparison, it ought to be remarked, parenthetically, that the principles of control of privately owned monopoly by a power entirely distinct, not only from the owners and managers, but also from the consumers of the company, apply with equal force to the regulation of publicly owned monopoly.

First, then, if regulation is to be successful, there must be a uniform system of accounts, records, and reports for like services in each of the states. This point involves, also, actual and frequent public auditing, and a real publicity not only of the auditing, but of the accounts. This implies the acknowledgment, to a greater extent than has yet been attained on the part of the owners, that these industries are of so public a nature that the public has the right to know every detail of the organization, financing, and management of the undertakings, to as full an extent as it has the right to know in regard to the management of the public schools or the health department of a city. There is, and there can be, no effective regulation until the companies are compelled or induced to act in good faith on this principle, and until the controlling organs of the state have money enough and experts enough to put this principle into effective operation. Nor can the idea be made effective in practice until the organ of the state which has supervision of these industries has financial resources enough, and employs a sufficient number of professional accountants and auditors, to keep the facts of these industries in an intelligent form before the city council, the legislature, and the consuming public. The accounts and the results of the auditing must not only be public, but they must be published, and actually brought before the voting portion of the public in such a manner as to enable the laymen to understand and compare them for the same company year by year, and also with other

companies. Of course, with this degree of publicity, the companies must in justice be protected and be permitted to protect themselves from competition by trade and traffic agreements (subject, of course, to approval by public authority and also made public). The rule must work both ways. This brings us to the same point again, namely, the recognition of the public character of the services.

The Massachusetts commissions already referred to, and the Interstate Commerce Commission, have had nominal power to do a large part of the work of control within this field, but, unfortunately, at no time have they had the funds, or any expectation of obtaining the funds within a reasonable number of years, to employ a sufficiently large and sufficiently permanent staff, to do this work satisfactorily. What is true of the auditing, accounting, and reporting is equally true of the engineering. Real control can never be obtained until the commission has constitutional, statutory, and financial power to organize, maintain, and direct a more adequate and effective engineering force in the field of each industry under the control of the commission, than is maintained by the largest and strongest company. When the whole world knows and understands the conditions of the industries through the work of the accountants and the engineers, we have made some real approach toward the regulation of prices, and we have come nearer to the solution of that vexed problem, the taxation of public service corporations. Here it is that we come to the first great technical difference between the public service commissions of New York and of Wisconsin.

Under the legislation of 1907, each of these commissions is nominally given unlimited power to inspect, to investigate, and to fix the price of services, within the

constitutional requirements, regarding due process of law, and just compensation, to be determined by judicial authority. Almost every provision that ingenuity can invent seems to have been inserted in both acts to prevent the courts from interfering unduly with the work or orders of the commissioners, and to prevent the companies from using the courts to stay orders of the commission pending a decision on their legality. The relation of the New York commission to the courts seems to be somewhat more promising than that of Wisconsin.

In the matter of rate regulation we have come face to face with the fact of capitalization, stock watering, and franchise values. As I have so often said in the last twenty years, proper consideration of the equities in the case of innocent holders and a due respect for the untold legions of widows and orphans involved in the controversy, as well as every consideration of mere expedience, requires that the stock watering of the past, so far as it is reflected in the market values of securities and in the present earnings of companies, and so far as it has been recognized as legal up to the present time, should be accepted on the ground that both the public and the companies have responsibilities for existing conditions. But, as previously stated, all *future* increment in the value of the franchises should be prevented by rate reductions or improvement in the service. The Wisconsin law has recognized a principle which heretofore has been but little regarded, although it is emphasized in the new Virginia constitution and the legislation resting upon it, namely, that whatever the specific legal terms or length of existing franchises may be, they have but little actual value in a growing community. A perpetual franchise to operate a street car line over a few miles of line only, in a growing city, has no practical value, for the reason

that additional franchises become absolutely essential at very frequent intervals to the life of the company. The state, therefore, finds itself almost everywhere with an actual right of amending franchises where no legal right exists, for to refuse a great company the powers necessary to enable it to meet the expanding needs of the community, is virtually to abolish the existing franchise, for this right to refuse amendments can be used by the legislature to obtain from the company a waiver of any rights considered injurious to the public. This enables the state to bring every corporation in all details under the provisions of an act establishing control according to the prevailing idea of justice at the present time.

The Wisconsin law has provided for this, but the control of rates rests on the idea that the owners of the enterprises are entitled to charge rates which will give them a fair return upon the capital actually and necessarily invested to render the service. This implies, of course, that the capital is not only honestly invested and managed, but is managed with a reasonable degree of skill and efficiency.

The sequel will probably prove that the most important step yet taken in America, in the field of regulating public service corporations, is to be found in the provisions of the Wisconsin law compelling the uniform accounting, auditing, and publicity, together with the requirement of the valuation of the physical assets. This provision for valuing the property is not, as the companies seemed to believe before the act was passed, an attempt to squeeze the existing water out of capitalization, or to destroy the value of the existing franchise. It is a mere step, and a necessary one, to determine the value of the existing property and franchises and to obtain the other necessary information without which the right to regulate prices

has no basis in equity, but degenerates into the old idea of a club or weapon with which to punish the companies. This provision may properly be regarded as an attempt to seize the *future* (*not the existing*) unearned increment on the franchise for the public. It leaves the existing value of the concern, including the capitalized value of the franchise, in the hands of the present holders. Any proposition short of this really destroys the foundation for regulating prices, and throws us back on the old idea that the companies are really private companies. In fact, to shut off the valuation of the physical assets is to hurl us back into the era of so-called competition, with all of its corruption. But these companies are really public. They are logically monopolies. From these two facts it follows that they ought to have their prices regulated. There can be no just ground, in an age of reason and intelligence, for permitting private owners to own, capitalize, and exploit forever the constantly growing value of these public franchises. It is the height of folly to advocate any rate regulation without a valuation of the physical property. It may be in some cases that the franchise furnishes the chief item of property, but the chief claim to compensation by the private owners must rest in the future on their contributions of capital. Until the amount of that is determined, of course, it is utterly impossible to determine the value of the franchise. For the combined value of the two is determined largely by the earnings. This total value cannot be analyzed or separated into its component parts without valuation of the physical property. The forces acting upon the value of a franchise are different in origin, direction, and effect from those acting on the value of the physical property. The one kind of value decreases by time and decay, the other increases with every step in human progress. The

only justification for allowing any financial return to the franchise of a public service company rests on the historical fact that such companies, before the public knew that they were of a public nature, were allowed to charge prices for the service which paid what was considered a fair return on the capital actually invested, and, in addition, furnished the basis for a high value of the franchise. Then the companies were permitted to issue capitalization against this value, and even to make false declarations as to the amount of such earnings, and thereby base excessive amounts of their watered capitalization on this surplus, and then palm such securities off on the innocent investor, the widow and the orphan, from whom protection is now claimed. Every element of value, tangible and intangible, ought to be taken into consideration in fixing the present value, both for taxation and the fixing of rates; but, as already indicated, the basis and starting point of all valuation for these purposes is the valuation of the physical property; without that, no scientific progress can be made.

In the two fundamental requisites of effective regulation, uniform accounting, together with public auditing, and the valuation of the tangible property, the Wisconsin law seems immensely superior to that of New York. I should say that the most hopeful feature of the New York law has nothing to do with the formal powers conferred upon the commission, but relates rather to the fact that, so nearly as may be under a constitutional government, the commission has placed at its service unlimited funds with formal authority of so broad and autonomous a nature conferred upon the commission, that it may, if it pleases, establish uniform accounting, auditing, and reporting; organize and maintain whatever staff of engineers, accountants, librarians, statisticians, and other

experts seems necessary, and may, if it chooses, beyond doubt, establish a physical valuation of the plants. Until the law is changed, that commission seems much less likely to be hampered from lack of funds than the Wisconsin commission. The practical danger in New York is that the commission will be swamped with what seem pressing demands upon its time and energies, and will involve itself in an untenable position in an attempt to prevent stock watering by passing upon petitions for the issue of stocks and bonds. Petitions of this sort may easily be made to occupy the major portion of the time of the commission to the exclusion of more important matters. The practical way to prevent stock watering, is to value the physical property of the company and fix the value of the franchise at the same time. This will check stock watering by making it utterly useless.

All previous attempts at regulation, state and federal, have been shipwrecked after accomplishing relatively little, by the inadequacy of the appropriations placed at their disposal. Let us hope that the reorganized Interstate Commerce Commission of 1906, and the public utilities commissions of New York and Wisconsin, will be able, even under the pressure of an impetuous and somewhat uneducated public opinion, to accomplish such a degree of success as will once and for all convince the public that all human government, in as complex affairs as these commissions are required to deal with, is a scientific matter, requiring expert knowledge, both of a higher degree and also of a much larger mass than has heretofore been recognized, and that these can be obtained only by large expenditures of money, and expenditures, too, on a very much larger scale than the public has heretofore deemed necessary.

In this respect the New York commissions (and nota-

bly that of the first district) are much more interesting experiments than that in Wisconsin. The problems in the first district of New York are, unfortunately, more dynamic at present and more consciously pressing for solution. Fortunately, the people begin to realize that vast sums of money are required for their solution. It is an inspiring sight, therefore, to see the resources of that district placed so much more largely than in any instance heretofore in America at the disposition of the public service commission. Every well-wisher of America, and every man who has come to realize that unregulated private monopoly in important public service is intolerable and unendurable ought to rejoice at the experiments now going on both in Wisconsin and New York, and to recognize them as probably the most important experiments in human government yet undertaken in America. Not least of all should he rejoice in the high character of the commissioners, and in the fact that, coupled with large legal powers, these commissions, especially in New York (first district), have adequate funds placed at their service to enable them to carry on their work. Let us all pray that public sentiment may so far be held in check as to give these commissions, substantially on the present basis, a considerable number of years to wrestle with this problem before their powers are greatly curtailed, or possibly destroyed by further and hostile legislation. Either law is good enough to bring about marvelous progress if only it can be saved from change, or the serious fear of change, until it has a chance to show what can be done under it.

EDWARD W. BEMIS: From an extended experience in representing cities before gas commissions in Massachusetts, New York and other states, I have become thoroughly convinced on the following points:

1. It is a good thing for the country to have the experience that the New York and Wisconsin public service commissions are furnishing.

2. It would be very unfortunate for most states to follow suit in the near future.

3. One reason for this is the denial of home rule in such legislation. It is all right for cities to be restricted by state legislation in the length of life of franchise grants and in some other respects, but fundamental decisions should rest with the people without any fear of veto by the state commission.

4. Municipal ownership is sure to be checked by such a commission, which invariably is hostile to the movement and is inclined to favor existing companies.

5. The theory of commission control would stand in the way of squeezing out franchise values preparatory to city purchase save as efforts at regulation or taxation might be made. Such efforts, however, are usually much restricted by the courts. The far more effective method of direct city competition or the threat of it, or indirect competition through a holding company as is being so successfully tried in Cleveland, would be practically impossible under a commission scheme.

6. Any attempt at appraisal of physical property is almost sure to err against the public and on the side of 10 per cent. to 30 per cent. of excess above the proper amount.

7. Most states would not secure such good commissions as New York and Wisconsin, where exceptional conditions appear to have favored the appointment of unusually public spirited men, independent of corporation control.

GEORGE E. HOOKER: It should perhaps be remembered that the franchise value spoken of by Prof. Gray, in his

chivalric championship of "the widows and orphans," is not only very uncertain and speculative in amount, but is often subject to reduction or effacement in certain wholly legal ways, so that it may not really be a vested right.

In the traction settlement ordinances recently adopted in Chicago a certain allowance for the value of unexpired franchises was made, largely on the basis of the profits then being realized from the then existing service and fares. That service, however, was bad, the fares charged were too high for the service rendered, and Chicago then had the power to regulate car fares. The City might presumably have reduced the fares, therefore, if it had chosen so to do, until it had lessened or perhaps practically wiped out profits above the interest charges on the actual capital investment. The city had the power thus to cut down, if not practically to obliterate, the franchise values. The criticism provoked by the allowance for franchise values in these renewal ordinances was, therefore, not without reason.

Franchise values can also be reduced, or wiped out, where the company lacks a monopoly, by the introduction of competing lines, especially with lower fares. Cleveland, as I am informed, lacks the power to regulate fares, but Cleveland is having a three cent fare company build and operate competing lines, and is thus rapidly squeezing the water out of the stock of the old company. It is wiping out franchise values.

In so far as franchise values are thus subject to being reduced or eliminated by perfectly legal means, their recognition as a vested interest would seem therefore to be open to question.

If a definite and certain basis on which to calculate franchise values be sought, a basis which shall not be subject to possible reduction by the legal methods men-

tioned above, it may be that the only basis of that sort would be found to be a rate of income merely sufficient to secure, under reasonable conditions, the tender of the requisite capital by the public for carrying on the street railways in question—and in that case franchise values would tend toward zero. In other words, franchise values are often largely a gamble on the probabilities or improbabilities of legal regulation or competition.

ALLEN R. FOOTE: I became a member of this Association seventeen years ago this week. Aa that time its annual meeting was held in the City of Washington. On that occasion Professor Henry C. Adams submitted a very able paper under the title of "Statistics as a Means of Preventing Abuses By Corporations."

In the course of a few remarks made on the subject of Professor Adam's paper, I said that I held his paper in high esteem because I believed in statistics as a means of preventing the abuse *of* corporations.

I then said that in my opinion the most valuable service this Association could render to the people at that time would be for it to appoint a committee to formulate a system of accounts to be kept by all public service corporations with the purpose of bringing into view every economic factor. That such a system should classify the items of the accounts into proper divisions under appropriate headings and that it should be made certain that every item was correctly entered in the division to which it was assigned and under its appropriate heading.

Having such a system of accounts, we could determine the direct profit or loss resulting from the ownership and operation of any utility and could then intelligently award the contract for supplying the service to a public or private corporation—whichever it was shown would produce the best economic results for the people.

Today, in two or three states, we have public utility commissions authorized by law to devise such a system of accounts to be kept by all of the public utilities operating in the several states, and the Inter-State Commerce Commission is authorized to prescribe the system of accounts to be used by public service corporations doing an inter-state commerce business.

It is now the duty of this Association to examine the system of accounts prescribed by these commissions and to see that they are properly devised to bring into view every economic factor. When public service corporations keep their accounts as prescribed by the commission under whose supervision they operate, when their charges for services rendered are approved or prescribed by such commission and all of their service rules and recommendations are submitted to the inspection and approval of such commission, the time has arrived when this Association should definitely declare that public policy requires that no utility shall be transferred from private to public ownership excepting it be for clearly defined economic reasons.

M. S. DUDGEON: Some of the remarks made by speakers who have preceded me indicate that they interpret the Wisconsin public utilities law as giving to the utilities additional rights to appeal to the courts to test or set aside rates made by the commission. A careful examination of the law will I think show them that they are in error. The higher courts both state and federal have repeatedly held that the public utilities have the absolute right under the federal constitution to appeal to the courts to set aside a commission-made rate on the ground that it is confiscatory. The Wisconsin law under these decisions is compelled to recognize and of course

does recognize these rights. Recognizing these rights the framers have made an evident effort so to limit the rights of recourse to the courts as to prevent it from being used for dilatory purposes.

The Wisconsin law makes the commission-made rate as binding as it constitutionally can. It declares the commission-made rate to be *prima facie* reasonable and valid, thus shifting to the attacking public utility the full burden of proving the commission-made rate to be confiscatory. This is as far as a statute can go. It will be remembered that in a railroad case the supreme court of the United States found that a statute of Minnesota which sought to make a legislative rate *conclusively* reasonable and valid was unconstitutional in that particular. The Wisconsin law also provides that all commission-made rates shall go into immediate effect pending an appeal to the courts, and forbids an injunctional order injoining the operation of the rate except on notice to the commission and after full hearing. The law also provides for speedy joining of issue in suits brought by the utilities, requires speedy trial, and gives suits involving the validity of rates priority over all other actions. The law also shuts off delayed appeals to the courts by a provision requiring all such appeals to be made within ninety days after the order of the commission is entered. This is probably as short a statute of limitation as would be sustained as constitutional.

Compelled as they were to recognize the right that the utilities had to appeal to the court it is evident that it was the purpose of the framers of the law not to extend the right, but so to limit and regulate the exercise of the right as to prevent it from being made an instrument of delay.